
**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Victor E. Niska

Plaintiff(s),

vs.

*RECEIVED
BY MAIL**JUL 14 2011**CLERK, US DISTRICT COURT
MINNEAPOLIS, MN*

Case No. _____

(To be assigned by Clerk of District Court)

ROLAND WALLESTAD, GARY A LINCOLN, DOUGLAS H
SHULMAN, GREG KANE, JOHN DOE, AND MARY ROE...,
HEREINAFTER APPEARING... INTERNAL REVENUE SERVICE
AND

JOSEPH SAXTON, JOHN G. STRUMPF, MARGARET PEMBERTON,
JOHN DOE, MARY ROE..., THOSE HEREINAFTER APPEARING,
WELLS FARGO BANK, N.A.

Defendant(s).

Judicial Notice of attached**DEMAND FOR JURY TRIAL****Memorandum of Law**YES NO **COMPLAINT****PARTIES**

1. List your name, address and telephone number. Do the same for any additional plaintiffs.

a. Plaintiff VICTOR EDWARD NISKA Estate

Name Victor E. Niska for Executor Office...

Street Address Post Office Box 221

County, City Wright, Waverly

State & Zip Code Minnesota [55390]

Telephone Number (763) 658-3009



2. List all defendants. You should state the full name of the defendant, even if that defendant is a government agency, an organization, a corporation, or an individual. Include the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption.

a. Defendant No. 1 Roland Wallestad

Name	Roland Wallestad, employee of Internal Revenue Service (IRS)
Street Address	6200 Shingle Creek Parkway, Suite 610
County, City	Hennepin, Brooklyn Center
State & Zip Code	Minnesota 55430

b. Defendant No. 2 Gary A. Lincoln

Name	Gary A. Lincoln, employee of IRS
Street Address	6200 Shingle Creek Parkway, Suite 610
County, City	Hennepin, Brooklyn Center
State & Zip Code	Minnesota 55430

c. Defendant No. 3 Greg Kane

Name	Greg Kane, employee of IRS—CFO.
Street Address	1111 Constitution Avenue, N.W., Room 3013
County, City	Washington, District of Columbia
State & Zip Code	District of Columbia 20224

Check here if additional sheets of paper are attached:

Please label the attached sheets of paper to correspond to the appropriate numbered paragraph above (e.g. Additional Defendants 2.d., 2.e., etc.)

JURISDICTION

Federal courts are courts of limited jurisdiction. Generally, two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case involving the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of

one state sues a citizen of another state and the amount of damages is more than \$75,000 is a diversity of citizenship case.

3. What is the basis for federal court jurisdiction? (*check all that apply*)

Federal Question Diversity of Citizenship

4. If the basis for jurisdiction is Federal Question, which Federal Constitutional, statutory or treaty right is at issue? List all that apply.

4th Amendment: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Article I, Section 2 (State): "No member of this state shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the state, otherwise than for a punishment for a crime which the party has been convicted."

5th Amendment: "No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment of indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

Plaintiff has seen no material facts or evidence other than a business entity (IRS) must be registered with the Secretary of State, State of Minnesota, to do business in that State; and debt collectors (IRS) must be licensed through the Commissioner of Commerce, State of Minnesota, to conduct debt collections in that State of Minnesota, and believes none exists. Does the Internal Revenue Service, IRS, have standing in the State of Minnesota? Does the IRS have any authority outside the District of Columbia?

Plaintiff has seen no material facts or evidence that Victor Edward Niska and Sonshine City, LLC, is involved with money laundering or terrorist activity and believes none exists.

5. If the basis for jurisdiction is Diversity of Citizenship, what is the state of citizenship of each party? Each Plaintiff must be diverse from each Defendant for diversity jurisdiction.

Plaintiff Name: _____ State of Citizenship: _____

Defendant No. 1: _____ State of Citizenship: _____

Defendant No. 2: _____ State of Citizenship: _____

5.

Check here if additional sheets of paper are attached.

6. What is the basis for venue in the District of Minnesota? (*check all that apply*)

G Defendant(s) reside in Minnesota G Facts alleged below primarily occurred in Minnesota -- IRS agent in Minnesota

G Other: explain

Wells Fargo Bank N.A., trustee for Victor Edward Niska Estate,
conducts business within the State of Minnesota.

STATEMENT OF THE CLAIM

Describe in the space provided below the basic facts of your claim. The description of facts should include a specific explanation of how, where, and when each of the defendants named in the caption violated the law, and how you were harmed. Each paragraph must be numbered separately, beginning with number 7. Please write each single set of circumstances in a separately numbered paragraph.

7. Claim is for Declaratory Judgment to Quash IRS Summons 2773216, dated May 17, 2011, against Wells Fargo Bank, NA, and for Injunctive relief pending this Court's decision.
8. In the matter of an IRS Summons 2773216, *Subpoena duces tecum* for Wells Fargo Bank to release financial records of the Victor Edward Niska Estate and Sonshine City, LLC, to the IRS, which was attested to by Roland Wallestad, countersigned by Gary A. Lincoln.
9. Plaintiff has seen no material facts or evidence that the Internal Revenue Service is registered with the Secretary of State, State of Minnesota, to do business in the State of Minnesota, (Exhibit A) and believes none exists.
10. Plaintiff has seen no material facts or evidence that the Internal Revenue Service is licensed with the Commissioner of Commerce, the State of Minnesota, to conduct debt collection activities within the State of Minnesota, (Exhibit B) and believes none exists.
11. An employee of Wells Fargo Bank, NA, was to appear before Roland Wallestad or his designee, on the 13th day of June, 2011, at 2:00 p.m. at 6200 Shingle Creek Parkway, Suite 610, Brooklyn Center, Minnesota, to provide all private financial records in their custody, for the Victor Edward Niska Estate and Sonshine City, LLC, any mortgages, checking and savings accounts, open or closed, safety deposit boxes, loan records, certificates of deposit, money market certificates, Treasury notes and bills, credit card applications, debit cards...
12. Summons 2773216 was dated May 17, 2011; timely refused. Motion to Quash the Subpoena with Affidavit in Support of Motion to Quash with Executor Letter was faxed to Wells Fargo Bank, NA, Legal Processing Center in Philadelphia, Pennsylvania and to Wells Fargo Bank, NA, in Buffalo, Minnesota, on June 8th, A.D. 2011 (Exhibit C, D & E). Margaret Pemberton is the branch manager for Wells Fargo Bank, N.A. in Buffalo, Minnesota.
13. Affidavit, Verified Declaration of Facts and Notice of Liability, supports the fact that funds

in said accounts are non taxable to Victor Edward Niska Estate and Sonshine City, LLC, per 12 USCS 411, demand for lawful money, and other law... Said sworn Affidavit alone was sufficient fact to quash IRS Summons 2773216.

14. Notice sent via first class mail from Wells Fargo NA was received on July 1, 2011, dated June 24, 2011, that they denied the Motion to Quash and that it is necessary to file a federal suit to stop the Internal Revenue Service from obtaining private records of the Victor Edward Niska Estate and Sonshine City, LLC... Joseph Saxton is the head of the Legal Processing Center for Wells Fargo Bank, N.A., Philadelphia, Pennsylvania.

15. Notice was mailed on July 1, 2011, to Wells Fargo Bank, NA, both in Philadelphia and Buffalo, as well as the Internal Revenue Service in Brooklyn Center, that a federal suit would be filed, also included was notice not to disclose any private information to the IRS.

16. Offset and discharge for all IRS issues were timely mailed to Greg Kane, Chief Financial Officer, and to Douglas H. Shulman, including Standard Form 28, Optional Forms 90 and 91, affidavits and surety bonds.

17. Any law passed by this State and the United States is null and void *ab initio* when it conflicts with the Constitutions for the United States and the several states—privacy of records.

Attach additional sheets of paper as necessary.

Check here if additional sheets of paper are attached:

Please label the attached sheets of paper to as Additional Facts and continue to number the paragraphs consecutively.

REQUEST FOR RELIEF

State what you want the Court to do for you and the amount of monetary compensation, if any, you are seeking.

Relief requested is for declaratory judgment in favor of the Victor Edward Niska Estate and Sonshine City, LLC... to protect their private financial records—not taxable under federal

law—from seizure by the Internal Revenue Service, through Wells Fargo Bank, N.A.—to quash IRS Summons 2773216, dated May 17, A.D. 2011.

Relief should be granted in harmony with the supreme law of the land, the Constitution for the United States of America (1789), the Bill of Rights ratified 15 December 1791, Minnesota's Constitutions of 1857; United States Code, Title 12, and sworn affidavit, Verified Declaration of Facts and Notice of Liability, dated June 8, A.D. 2011, not inclusive.

Injunctive relief is immediately requested against Wells Fargo Bank, NA, from releasing private financial information/records to the Internal Revenue Service pending the outcome of this Case for Declaratory Judgment to Quash IRS Summons 2773216... A jury trial may be requested—right to a jury trial it is not waived. Plaintiff reserves the right to sue defendants for damages should declaratory relief be denied, as Wells Fargo Bank, N.A., will be an unlawful third-party informant.

Signed this 11th day of July, A.D. 2011.

Signature of Plaintiff by: ...

Mailing Address Post Office Box 221
Waverly, Minnesota 55390

Telephone Number (763) 658-3009

List of Exhibits:

- Exhibit A: Certificates of Non Registration with State; page 5.
- Exhibit B: Certificate of Non Licensing with Department of Commerce, page 5.
- Exhibit C: Motion to Quash Subpoena with (affidavit), page 5
- Exhibit D: Verified Declaration of Facts and Notice of Liability; page 5.
- Exhibit E: Executor Letter dated June 1, 2011, page 5.

Additional defendants, 2d, 2e, 2f, 2g:

d. Defendant No. 4 Douglas H. Shulman
Name Douglas H. Shulman, Commissioner of IRS
Street Address 1111 Constitution Avenue, N.W., Room 3013
County, City Washington, District of Columbia
State & Zip Code District of Columbia 20224

e. Defendant No. 5 Joseph Saxton
Name Joseph Saxton, employee of Wells Fargo Bank N.A.
Street Address 410 Market Street, Mail Code Y1372-110
County, City Philadelphia, Philadelphia
State & Zip Code Pennsylvania 19101

f. Defendant No. 6 John G. Strumpf
Name John G. Strumpf, employee of Wells Fargo Bank, N.A.
Street Address 410 Market Street, Mail Code Y1372-110
County, City Philadelphia, Philadelphia
State & Zip Code Pennsylvania 19101

g. Defendant No. 7 Margaret Pemberton
Name Margaret Pemberton, employee of Wells Fargo Bank, N.A.
Street Address 200 First Street South
County, City Wright, Buffalo
State & Zip Code Minnesota 55313

Judicial Notice to the Court.**Memorandum of Law**

Victor E. Niska's petition, regardless if deemed in-artfully plead, must be held to a less stringent standard than formal pleadings drafted by bar-admitted attorneys and **can only be dismissed for failure to state a claim if it appears beyond a doubt that Victor E. Niska can prove no set of facts in support of [his] claims which would entitle it to relief."** [in the nature of Haines v. Kerner, 404 U.S., 519-521; Richardson v. Flemming, 651 F.2d at 368 (quoting Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d. 251, (1976); Conley v. Gibson, 355 U.S. 41, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957); Alexander v Ware, 714 F.2d 416 (1983); Hayes v Western Weighing and Inspection Bureau, 838 F.2d. 1434 (5th Cir. 1988))]. Victor E. Niska's factual allegations in the text must be accepted as true, along with any reasonable inferences that may be drawn therefrom. [in the nature of Ryland v. Shapiro, 708 F.2d. 987 (5th Cir. 1983)]. Victor E. Niska's Petition must not be read "too narrowly", but must instead be read "liberally" so that any inferences may be drawn therefrom. [in the nature of Bruce v. Wade, 537 F.2d. 850 (5th Cir. 1976)].

JURISDICTION

Declaratory judgments are provided for by both federal and state law. 28 U.S.C. §§2201-02, Minnesota Statutes and Rules of Civil Procedure, also the Uniform Declaratory Judgment Act). Declaratory judgments permit parties to a controversy to determine rights, duties, obligations or status; and injunctive relief provides for protection in the interim.

The operation of the Declaratory Judgment Act is procedural only. Relief under the Act is available only if the requisites of jurisdiction, in the sense of a federal right or diversity, provide foundation for resort to the federal courts. The Declaratory Judgment Act allowed relief to be given by way of recognizing the plaintiff's right to be secure in place, papers, and affects...

Immediate injunctive relief is requested as Wells Fargo Bank N.A. has an IRS subpoena pending for records with regard to banking accounts dated May 17, A.D. 2011. Wells Fargo Bank denied Motion to Quash by the court. But the requirements of jurisdiction - the limited subject matters which Congress alone had authorized the District Courts to adjudicate - were not impliedly repealed or modified. Skelly Oil Co. v. Phillips Petroleum Co., 339 U.S. 667, 70 S.Ct. 876, 94 L.Ed. 1194 (1950). The plaintiff has seen no material facts or evidence that the Internal Revenue Service (IRS) is registered or chartered with the Minnesota Secretary of State's Office to conduct business in the State of Minnesota or is licensed by the commissioner of commerce to act as a debt collector in the State of Minnesota and believes none exists. (Exhibit A)

CASE OR CONTROVERSY

The United States Constitution (Article III, Section 2) limits the exercise of the judicial power to 'cases' and 'controversies.' The Declaratory Judgment Act, in its limitation to 'cases of actual controversy', refers to the constitutional provision and is operative only in respect to controversies which are such as in the constitutional sense. A justifiable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character; from one that is

academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617 (1937). For adjudication of constitutional issues 'concrete legal issues, presented in actual cases, not abstractions' are requisite. The power of courts to pass upon the constitutionality of acts of Congress arises only when the interests of litigants require the use of the judicial authority for their protection against actual interference. A hypothetical threat is not enough. United Public Workers v. Mitchell, 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 (1947).

STANDARDS OF REVIEW

A federal district court should, in the exercise of discretion, decline to exercise diversity jurisdiction over a declaratory judgment action raising issues of state law when those same issues are being presented contemporaneously to state courts. Provident Tradesmens Bank & Trust Co., v. Patterson, 390 U.S. 102, 88 S.Ct. 733, 19 L.Ed. 2d 936 (1968).

Although Rule 57 of the Federal Rules of Civil Procedure permits declaratory relief, although another adequate remedy exists, it should not be granted where a special statutory proceeding has been provided. In cases where a state criminal prosecution was begun prior to the federal suit, the same equitable principles relevant to the propriety of an injunction must be taken into consideration by federal district courts in determining whether to issue a declaratory judgment, and that where an injunction would be impermissible under these principles, declaratory relief should be denied as well. Katzenbach v. McClung, 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed.2d 290 (1964).

Federal district courts possess discretion in determining whether and when to entertain an action under the Declaratory Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites. District courts have substantial latitude in deciding whether to stay or to dismiss a declaratory judgment suit in light of pending state proceedings (and need not point to "exceptional circumstances" to justify their actions). The Declaratory Judgment Act is "an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant." Wilton v. Seven Falls Co. ____ U.S. ___, 115 S.Ct. 2137, 132 L.Ed.2d 214 (1995). The Declaratory Judgment Act states only that a court may declare the rights and other legal relations of any interested party seeking such declaration. Where it is uncertain that declaratory relief will benefit the party alleging injury, the court will normally refrain from exercising its equitable powers.

Ref: Utah Case Number 061500329.

Ezk 3:17-19 "Son of man, I have made you a watchman for the house of Israel; whenever you hear a word from my mouth, you shall give them warning from me. If I say to the wicked, 'You shall surely die,' and you give them no warning, nor speak to warn the wicked from his wicked way, in order to save his life, that wicked man shall die in his iniquity, but his blood I will require at your hand. But if you warn the wicked, and he does not turn from his wickedness, or from his wicked way, he shall die in his iniquity; but you will have saved your life..." Holy Bible, RSV 1952

Deut 19:16-19 "If a malicious witness rises against any man to accuse him of wrongdoing, then both parties to the dispute shall appear before the Lord, before the priests and the judges who are in office in those days; the judges shall inquire diligently, and if the witness is a false witness and has accused his brother falsely, then you shall do to him as he had meant to do to his brother; so you shall purge the evil from the midst of you." ##